



ANALYSIS

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SCHEDULE

Schedule Added to Nurses Act 1977

1999, No. 133

An Act to amend the Nurses Act 1977

[14 October 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Nurses Amendment Act 1999, and is part of the Nurses Act 1977 (“the principal Act”).

(2) This Act comes into force on the 7th day after the date on which it receives the Royal assent.

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “chairman”, and substituting the following definition:

“‘Chairman’ means the chairman of the Council appointed under clause 1 of the Schedule.”

(2) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Document’ has the same meaning as it has in the Official Information Act 1982:

“‘Electronic transmission’ includes facsimile, electronic mail, or other similar means of communication:”.

3. New sections substituted—The principal Act is amended by repealing sections 3 and 4, and substituting the following sections:

“3. Constitution of Nursing Council—(1) There continues to be a Council known as the Nursing Council of New Zealand.

“(2) The Council is a body corporate with perpetual succession and a common seal, and has and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

“4. Membership of Council—(1) The Council consists of—

“(a) Three registered nurses; and

“(b) Two registered midwives; and

“(c) Two academic staff members of approved nursing and midwifery tertiary training institutions; and

“(d) Four other persons, of whom—

“(i) One (but not more than 1) may be a registered nurse; and

“(ii) One (but not more than 1) may be a registered midwife.

“(2) Each member of the Council is appointed by the Minister by notice published in the *Gazette*.

“4A. Term of office—(1) Each member takes office from a date specified for that purpose in the notice appointing the member or, if no date is specified in the notice, from the date on which the notice is published in the *Gazette*.

“(2) Each member is appointed for a term of 3 years or such shorter term as is specified in the notice of appointment, and may be reappointed from time to time, but no person is eligible to be a member for more than 9 consecutive years.

“4B. Vacation of office—(1) Any member of the Council may at any time resign his or her office by giving a notice to that effect to the Minister.

“(2) A member of the Council is to be taken to have vacated his or her office if—

“(a) He or she dies; or

“(b) He or she is adjudged bankrupt under the Insolvency Act 1967.

“(3) Any member of the Council may be removed from office by the Minister, by notice given to the member, on the grounds of a mental or physical condition affecting performance of duty, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister.

“(4) A member of the Council may be removed from office by the Minister, with the concurrence of the Council, by notice given to the member, on the ground that the member’s performance on the Council is inadequate.

“(5) The powers of the Council are not affected by any vacancy in its membership.”

4. Sections repealed—Sections 5, 6, 7 (2), and 8 of the principal Act are repealed.

5. Fees and allowances—The principal Act is amended by repealing section 10, and substituting the following section:

“10. There may be paid to members of the Council and any committee appointed by the Council, out of the funds of the Council, such remuneration (by way of fees, salary, or otherwise) and allowances and expenses as the Council from time to time determines.”

6. Other committees—The principal Act is amended by repealing section 13.

7. Finance—Section 14 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) The Council may borrow money for the operations of the Council, and may use any of its assets as security for any money it borrows.”

8. New sections inserted—The principal Act is amended by inserting, after section 14, the following sections:

“14A. **Council may prescribe fees**—(1) The Council may from time to time, by notice in the *Gazette*, prescribe the fees payable in respect of the following matters:

“(a) An application for registration under this Act:

“(b) An addition or alteration to the register:

“(c) The issue of a practising certificate:

“(d) The issue of any other certificate, or a copy of any certificate:

“(e) The supply of a copy of any entry in the register:

“(f) Inspection of the register, or of any other documents kept by the Council that are open for inspection:

“(g) The supply to any nurse of any documents, other than certificates of registration, required by him or her for the purpose of seeking registration overseas:

“(h) Examinations set or approved by the Council:

“(i) Any other matter that relates to anything the Council is required to do in order to carry out its functions.

“(2) Different fees may be prescribed under this section for different classes of nurse.

“(3) Any notice prescribing any fee under this section may exempt any class or classes of person from liability to pay any such fee, and may provide for the waiver or refund of any such fee.

Cf. 1995, No. 95, s. 126

“14B. **Disciplinary levy**—(1) The Council may from time to time, by notice in the *Gazette*, impose on every registered nurse a disciplinary levy of such amount as it thinks fit for the purpose of funding the costs arising out of—

“(a) Investigations by the Preliminary Proceedings Committee; and

“(b) Proceedings concerning discipline under this Act.

“(2) Any notice imposing any levy under this section may exempt from liability to pay such levy any class or classes of registered nurse, and may provide for the waiver or refund of any such levy.

Cf. 1995, No. 95, s. 127

“14C. **Further provisions relating to fees and levy**—(1) Any notice under section 14A or section 14B may, by notice in the *Gazette*, be amended or revoked by the Council at any time.

“(2) Every notice under section 14A or section 14B comes into force on a date specified in the notice, being not less than 28 days after the date of publication of the notice in the *Gazette*.

“(3) Every notice under section 14A or section 14B is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“(4) Every fee set under section 14A, and every levy imposed under section 14B, is payable, and recoverable as a debt due, to the Council.”

Cf. 1995, No. 95, s. 128

9. Further provisions relating to Council in Schedule—

The principal Act is amended by inserting, after section 15, the following section:

“15A. The provisions set out in the Schedule apply to the Council and its proceedings.”

10. Disciplinary powers of Council—Section 42 (2) (c) of the principal Act is amended by omitting the expression “\$1,000”, and substituting the expression “\$10,000”.

11. Restriction on use of titles—Section 52 of the principal Act is amended by omitting from subsection (1), and also from subsection (2), the expression “\$1,000”, and substituting in each case the expression “\$10,000”.

12. Exclusion of liability—The principal Act is amended by repealing section 55, and substituting the following section:

“55. (1) Neither the Council, nor the Preliminary Proceedings Committee appointed under section 12, nor a committee appointed under clause 9 of the Schedule, nor a legal assessor appointed under section 44, nor any member, officer, agent, or employee of any of those bodies or persons, is under any criminal or civil liability in respect of—

“(a) Any act done or omitted to be done in the course of the exercise or intended exercise of any of their functions, duties, or powers under this Act; or

“(b) Any words spoken or written at, or for the purposes of, the hearing of any inquiry or other proceedings under this Act; or

“(c) Anything contained in any notice given under this Act.

“(2) Subsection (1) does not exclude the liability of any body or person for anything done or omitted in bad faith or without reasonable care.

“(3) Subsection (1) does not exclude the liability of the Council in respect of a power that is conferred solely by section 3 (2) or section 7.

“(4) No person is under any civil liability or subject to any disciplinary jurisdiction in respect of any notice given under section 34.

“(5) Subsection (4) does not protect any person from civil liability or disciplinary jurisdiction in respect of anything done or omitted in bad faith or without reasonable care.

“(6) To avoid any doubt, this section does not affect the right of any person to apply, in accordance with law, for judicial review.”

13. Schedule added—The principal Act is amended by adding the Schedule set out in the Schedule of this Act.

14. Consequential repeals and revocation, and saving—(1) Section 60 (1) of the principal Act is amended by repealing paragraphs (d), (e), (f), and (g).

(2) Regulations 27 and 27A of the Nurses Regulations 1986 (S.R. 1986/159) are revoked.

(3) Despite subsection (2), the fees specified in the Nurses Regulations 1986, as in force before the commencement of subsection (2), continue to be payable in respect of the matters specified in those regulations until the close of the day before the date on which the first notice under section 14A of the principal Act comes into force.

(4) The following enactments are consequentially repealed:

(a) Section 3 of the Nurses Amendment Act 1983:

(b) Section 2 of the Nurses Amendment Act 1990:

(c) So much of the Fourth Schedule of the Health Reforms (Transitional Provisions) Act 1993 as relates to section 4 of the principal Act.

15. Transitional provisions relating to membership of Board—(1) Despite section 3, the persons holding office immediately before the commencement of this Act as members of the Council under section 4 of the principal Act (as in force immediately before the commencement of this Act)—

(a) Continue to hold office; and

(b) Are to be regarded as members of the Council continued under section 3 of the principal Act (as enacted by this Act); but

(c) Cease to be members of the Council—

(i) When the first persons take office under section 4 of the principal Act (as enacted by this Act); or

(ii) If no appointments are made under section 4 of the principal Act (as enacted by this Act) before the expiry of the period of 1 year beginning on the

commencement of this Act, on the expiry of that period.

(2) The prohibition contained in section 4A(2) of the principal Act against being a member of the Council for more than 9 consecutive years does not apply to a member holding office immediately before the commencement of this section, but only for as long as that member—

(a) Continues to hold office under this section; or

(b) Holds office under an appointment made within 1 year beginning on that commencement.

(3) Subsection (1) is subject to section 4B of the principal Act.

(4) Subsection (1) does not apply to the officer of the Ministry of Health appointed under section 4(1)(a) of the principal Act (as in force immediately before the commencement of this Act), and that officer ceases to be a member of the Council on the commencement of this Act.

Section 13

SCHEDULE

SCHEDULE ADDED TO NURSES ACT 1977

Section 15A

"SCHEDULE

"PROVISIONS APPLYING IN RESPECT OF NURSING COUNCIL OF NEW ZEALAND

1. Chairman and deputy chairman—(1) At its first meeting in each year, the Council must elect 1 of its members to be its chairman, and another to be its deputy chairman.

(2) A member who holds the office of chairman or deputy chairman continues in office until his or her successor is elected, and is eligible for re-election (subject to section 4B).

(3) A member who holds the office of chairman or deputy chairman may—

(a) At any time be removed from the office of chairman or deputy chairman by the Council; or

(b) At any time resign his or her office by giving a notice to that effect to the registrar.

(4) If a person who holds the office of chairman or deputy chairman ceases to be a member of the Council, the Council must elect 1 of its members to fill that vacancy in the office of chairman or deputy chairman as soon as reasonably practicable.

Cf. 1995, No. 95, Second Schedule, cl. 1

2. Deputy chairman may act for chairman—(1) The deputy chairman of the Council has and may exercise or perform all the functions, duties, and powers of the chairman if—

(a) The chairman of the Council is at any time incapable of acting as chairman because of illness, absence, or any other reason; or

(b) There is a vacancy in the office of chairman.

(2) The deputy chairman is, while acting for the chairman, to be regarded as the chairman of the Council.

(3) No act done by the deputy chairman while acting for the chairman and no act done by the Council while the deputy chairman is acting for the chairman, may in any proceedings be questioned on the ground that the occasion entitling the deputy chairman to act had not arisen or had ceased.

Cf. 1995, No. 95, Second Schedule, cl. 2

3. Meetings—(1) Meetings of the Council are held at—

(a) Times appointed by the Council; and

(b) Subject to clause 7, places appointed by the Council.

(2) The registrar or other appropriate officer must give each member of the Council notice of a meeting of the Council, but the registrar or other appropriate officer is not required to give notice to a member who is absent from New Zealand.

(3) At any meeting of the Council, the quorum necessary for the transaction of business is 5 members.

(4) For the purposes of determining the quorum, a member who is a representative under clause 4 may be counted only once.

(5) A meeting of the Council at which the quorum is present is competent to perform or exercise any of the functions, duties, and powers exercisable by the Council.

Cf. 1995, No. 95, Second Schedule, cl. 8

SCHEDULE—*continued*SCHEDULE ADDED TO NURSES ACT 1977—*continued*“SCHEDULE—*continued*”“PROVISIONS APPLYING IN RESPECT OF NURSING COUNCIL OF NEW ZEALAND—*continued*”

4. Members representing other members—(1) A member of the Council may be represented by another member of the Council (that other member is in this clause referred to as “a representative”).

(2) A member of a Council may, by written notice to the Registrar or other appropriate officer, appoint a representative to represent the member on the Council, for 1 or more specific meetings that have been called or are proposed to be called, whenever the member is absent or unable to act as a member of the Council.

(3) The appointment of a representative ceases if—

(a) The person who appointed the representative revokes, by written notice, the appointment; or

(b) The person who appointed the representative ceases to be a member of the Council; or

(c) The representative ceases to be a member of the Council.

(4) A notice referred to in subclauses (2) or (3) may be delivered by hand or sent by mail or electronic transmission.

(5) Subject to subclause (6), a representative may vote on behalf of the member whom he or she represents, and has and may exercise all the powers, rights, privileges, and duties of that member.

(6) A representative may not, in his or her capacity as representative,—

(a) Act as chairman or deputy chairman of the Council; or

(b) Vote on any matter arising under sections 32 to 34 or Part IV; or

(c) Witness the affixing of the seal of the Council.

(7) The voting and other powers that a person has as a representative are in addition to the powers that the person has as a member of the Council.

Cf. 1993, No. 22, Second Schedule, cl. 5

5. Voting at meetings—(1) All questions arising at any meeting of the Council are decided by a majority of the votes cast by the members present.

(2) The person presiding at the meeting has a deliberative vote, and, in the case of an equality of votes, also has a casting vote.

(3) No member of the Council is entitled to be present or vote or otherwise participate in the capacity of a member of the Council at any part of a meeting of the Council where any matter relating to the member’s registration, suspension, competence, fitness to practise, or discipline under this Act is being considered.

Cf. 1995, No. 95, cl. 10

6. Resolution assented to by members—(1) The chairman may circulate, by letter or electronic transmission, to each member of the Council a document setting out a draft resolution and requesting each member to assent to the resolution within a specified period of at least 3 clear days.

(2) If a majority of the members of the Council, by letter or electronic transmission, signs or assents to a resolution circulated under subclause (1), the resolution is as valid and effective as if it had been passed at a meeting of the Council duly called and constituted.

SCHEDULE—*continued*SCHEDULE ADDED TO NURSES ACT 1977—*continued*“SCHEDULE—*continued*”“PROVISIONS APPLYING IN RESPECT OF NURSING COUNCIL OF NEW ZEALAND—*continued*”

(3) Any such resolution may consist of several documents that are similar in form, each signed or appearing to have been sent by 1 or more members.

(4) Every such resolution must be tabled at the next meeting of the Board held after the date on which the resolution takes effect.

Cf. 1995, No. 95, Second Schedule, cl. 11

7. Teleconference meetings—(1) The contemporaneous linking together by telephone or videolink or other means of communication of a number of members of the Council, being not less than the quorum stated under clause 3 (3), whether or not 1 or more of those members are out of New Zealand, is to be taken as constituting a meeting of the Council to which the provisions of this Act apply, if the following conditions are met:

- (a) Notice must have been given, by letter or telephone or electronic transmission, to every member of the Council entitled to receive notice of a meeting of the Council; and
- (b) Each member taking part in the meeting must—
 - (i) Be linked by telephone or videolink or other means of communication for the purposes of the meeting; and
 - (ii) At the commencement of the meeting acknowledge, to all the other members taking part, the member's presence for the purpose of a meeting of the Council; and
 - (iii) Be able throughout the meeting to hear each of the other members taking part; and
 - (iv) On any vote, individually express his or her vote to the meeting.

(2) A member may not stop participating in a meeting held under this clause by disconnecting the member's telephone or videolink or other means of communication without the express consent of the person presiding at the meeting.

(3) A minute of the proceedings at a meeting held under this clause is sufficient evidence of those proceedings, and the observance of all necessary formalities, if certified as a correct minute by the person presiding at the meeting.

Cf. 1995, No. 95, Second Schedule, cl. 12

8. Procedure—(1) The Council must observe the rules of natural justice but, subject to that requirement, may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law.

(2) Subject to this Act and any regulations made under this Act, the Council may regulate its procedure in such manner as it thinks fit.

Cf. 1995, No. 95, Second Schedule, cl. 13

9. Appointment of committees—The Council may from time to time appoint 1 or more committees of the Council, and—

- (a) Any such committee may include or consist of persons who are not members of the Council; and

SCHEDULE—*continued*SCHEDULE ADDED TO NURSES ACT 1977—*continued*“SCHEDULE—*continued*”“PROVISIONS APPLYING IN RESPECT OF NURSING COUNCIL OF NEW ZEALAND—*continued*”

- (b) The Council must regulate the procedure of each such committee in such manner as it thinks fit; and
- (c) The Council may at any time discharge, alter, or reconstitute any such committee.

Cf. 1995, No. 95, Second Schedule, cl. 14

10. Delegation—(1) The Council may from time to time, by written notice, delegate any of its functions, duties, or powers (other than powers of decision concerning discipline under this Act) to any committee appointed under clause 9.

(2) Unless otherwise provided in the delegation, a delegate may exercise a function, duty, or power of the Council delegated to it under this clause in the same manner and with the same effect as if the delegate were the Council, but may not further delegate the function, duty, or power.

(3) Any delegation under this clause may be revoked at any time, and the delegation of a function, duty, or power does not prevent the Council from exercising the function, duty, or power itself.

(4) Every delegate purporting to act under any delegation under this clause is, until the contrary is proved, presumed to be acting in accordance with the terms of the delegation.

Cf. 1995, No. 95, Second Schedule, cl. 15

11. Seal—(1) The Council must provide for the safe custody of its common seal, which must be in such form as the Council decides.

(2) The common seal may be used only by the authority of a resolution of the Council, or of a committee of the Council, and every document to which the seal is affixed must be signed by 2 persons, each of whom is—

- (a) A member of the Council; or
- (b) A person authorised to sign that document or documents of that kind.

(3) The seal of the Council must be judicially noticed in all courts and for all purposes.

Cf. 1995, No. 95, Second Schedule, cl. 19

This Act is administered in the Ministry of Health.
